Editor's note: Reconsideration denied by order dated Oct. 21, 1975

HELEN F. SMITH

IBLA 74-9 Decided May 8, 1974

Appeal from decision by Alaska State Office, Bureau of Land Management, rejecting Native allotment application AA 7777.

Affirmed.

Alaska--Native Allotments: Alaska--Land Grants and Selections

> A selection filed by the State of Alaska under its Statehood Act segregates the land from all appropriations based on settlement and location when the application is accepted by BLM and posted to the appropriate land status records. A Native allotment application is properly rejected where occupation and use began after the filing of an acceptable state selection.

APPEARANCES: James K. Tallman, Esq., Anchorage, Alaska, for appellant; Loretta C. Douglas, Esq., Office of the Solicitor, U. S. Department of the Interior.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Helen F. Smith filed Native allotment application AA 7777, claiming occupancy of the land sought from September 1968.

The Alaska State Office, Bureau of Land Management, rejected the application by decision of June 4, 1973, because the land is embraced in state selection application Anchorage 054334, filed on May 2, 1961. The decision recited that the land was segregated by the State selection and had not been open to settlement since May 2, 1961.

Appellant asserts that the State is estopped from challenging her application because it did not give her personal notice of its selection and has not disturbed her possession. She also asserts that ancestral use of the land commenced prior to 1961, and that she, as a child of parents who had used the land, had prior existing rights which cannot be affected by the state selection.

The regulations provide that lands applied for by the State of Alaska will be segregated from all appropriations when the State files its application to select. 43 CFR 2627.4(b). The validity of this regulation has been recognized by the courts. State of Alaska, 73 I.D. 1 (1966), aff'd sub nom. Kalerak v. Udall, 396 F.2d 746 (9th Cir. 1968), cert. denied, 393 U.S. 1118 (1969). A state selection will not extinguish valid prior existing rights, but it has not been demonstrated that this appellant has any such rights. Appellant may claim rights only from the time of her actual occupation and use; she may not tack on the time that the land may have been occupied or used by her parents or other ancestors. Larry W. Dirks, Sr., 14 IBLA 401 (1974). Substantial use and occupancy, as contemplated by the Alaska Native Allotment Act, 43 U.S.C. §§ 270-1 (1970), 1/ must be by the native as an independent citizen for himself or as head of a family, and not as a minor child occupying or using the land in company with his parents. Arthur C. Nelson (On Reconsideration), 15 IBLA 76 (1974).

The appellant, Helen F. Smith, was born January 5, 1947. On May 2, 1961, when the subject tract was segregated from entry by the filing of the Alaska state selection application, Mrs. Smith was only 14 years of age. There is nothing in the record to show that she was not living, as a minor child, with her parents at that time. Appellant's statement, in 1973, that she had used and occupied the subject tract for more than 20 years would have us believe that she was asserting independent control and use of the land when she was but six years of age. This assertion flies in the face of reason.

We view as specious the argument that the State is estopped from claiming the land under its selection application because it has not disturbed her in the use of the subject land and did not give appellant personal notice of the selection. Appellant is bound and charged with notice of the official records of the Bureau of Land Management. Before attempting to occupy the land in 1968, appellant was under obligation to check the records to determine whether the land was open. This she apparently did not do. She may not now be heard to complain of her own failure to protest the State selection in the seven intervening years. The land was segregated by the state selection; appellant's abortive attempt to create allotment rights on land closed to settlement cannot serve to create such rights. Kalerak v. Udall, supra; David Capjohn, 14 IBLA 330 (1974); State of Alaska, 6 IBLA 58, 79 I.D. 391 (1972); Theodore A. Velania, A-30953 (Mar. 7, 1969).

1/ Repealed by Pub. L. 92-203, § 18(a), December 18, 1971, 85 Stat. 710.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision below is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Newton Frishberg
Chief Administrative Judge